A Guide to the Development Permit System

IMPLEMENTING BILL 62

Ministry of Municipal Affairs
HON. BILL RITCHIE, MINISTER

87-00851/

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GUIDE

TO THE

DEVELOPMENT PERMIT SYSTEM

Development Services Branch
Ministry of Municipal Affairs

Prepared under the Auspices of the
Development Process Advisory Committee

May, 1986

Canadian Cataloguing in Publication Data

Main entry under title:
A Guide to the development permit system

ISBN 0-7726-0487-8

1. British Columbia. Municipal Amendment Act, 1985. 2. Land use - Law and legislation - British Columbia. 3. Building laws - British Columbia. I. British Columbia. Development Process Advisory Committee. II. British Columbia. Ministry of Municipal Affairs. Development Services Branch.

KEB503.G84 1986 346.71104'677 C86-092101-8

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ACKNOWLEDGEMENTS

This guide was prepared under the auspices of the Development Process Advisory Committee, comprised of the following organizations:

- Canadian Home Builders' Association
- Ministry of Municipal Affairs
- Planning Institute of British Columbia
- Union of British Columbia Municipalities
- Urban Development Institute

The main role of the Committee is to facilitate implementation of Bill 62 (the Municipal Amendment Act, 1985) and to ensure that the intent of the legislation is realized through joint involvement of government and the private sector.

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1. INTRODUCTION

1.1 Background

On December 2, 1985 the Municipal Amendment Act, 1985, otherwise known as Bill 62, became law. This legislation introduced extensive changes to the Municipal Act, from which all local governments, with the exception of the City of Vancouver, derive their authority over land use planning.

To assist in implementing the new legislation, the Development Process Advisory Committee (DPAC) was formed, comprised of representatives of the Ministry of Municipal Affairs, local government, the development industry, and the planning profession. The development permit system was identified as a key component of the new legislation for which assistance would be required to facilitate implementation. Accordingly, a sub-committee was requested to prepare "A Guide to the Development Permit System".

1.2 Objectives of the Guide

This guide is intended to

- ensure the legislation is understood and the intent realized, and
- facilitate implementation with the least possible disruption to the development process.

It is intended to assist both local government and the private sector by explaining the legislation and providing examples. Nothing in the guide is to be construed as a guarantee of legal certainty.

1.3 Structure of the Guide

Section 1 provides background to the legislation and the guide.

Section 2 outlines the five categories of development permit areas provided for in the legislation, explains the process for designation in the Official Community Plan, and includes examples of plan designation requirements.

Section 3 outlines the circumstances under which a development permit is required.

Section 4 reviews the scope of development permits by outlining aspects of development which can be regulated in each of the five categories of development permit areas.

Section 5 focuses on administrative aspects of the development permit system.

Section 6 reviews the transitional aspects of the legislation, in particular the status of development permit areas designated pursuant to Section 717 of the previous legislation and the status of development permits issued in these areas.

1.4 Background to the Development Permit System

The concept of development permits was introduced into the Municipal Act in 1977. This concept provided local government the ability, where it considered special conditions existed, to make limited alterations or variances to its zoning and subdivision control bylaws through a permit system rather than a more lengthy bylaw amendment process. The intention was that the bylaw variances would not affect use or density and thus could be administered by permit, without public hearing, etc.

Since 1977, development permits have been widely used. They have allowed local government to exercise a level of discretion in varying and supplementing certain regulations. Developers have also benefited from the flexibility, and the result has been more innovative developments than otherwise could have occurred under the more rigid bylaw requirements.

While the development permit system as a whole has operated effectively it has had some undesirable results. There has been uncertainty on the part of local government as to what could be regulated or required by development permit, and to what level of detail. Also, the flexibility and discretion granted local government has resulted in uncertainty on the part of the developer as to what could be required in order for a development to proceed. This uncertainty has, in some cases, led to substantial delays in the approval process as well as a feeling of "unfairness" where unexpected requirements have been included in the development permit. This dichotomy, between what should be known "up front" and what should remain negotiable, was a key area of examination in the development permit legislation review.

1.5 Overview of the Development Permit Legislation

While the development permit system has been maintained as a major vehicle for providing flexibility in land use regulation, the Municipal Amendment Act, 1985 introduced extensive changes and refinements. An overview of the new development permit legislation follows:

- If development permits are to be used, the areas must be designated in the Official Community Plan, rather than in the zoning bylaw as required in the previous legislation.

- In areas covered by a Rural Land Use Bylaw, development permit areas cannot be designated.

- Development permits may only be issued within designated development permit areas. Development variance permits, in part, replace the former voluntary development permits. These can vary

zoning regulations (other than use and density) as well as provisions of a number of other bylaws, and may be issued in any area, and do not require pre-designation in an official community plan.

- Development permit areas may only be designated for purposes of: protection of the natural environment; protection from hazardous conditions; protection of Provincial or municipal heritage sites; revitalization of designated commercial areas; or regulation of the form and character of commercial, industrial and multi-family residential development.

- The Official Community Plan must describe the special conditions or objectives which justify the designations and must specify how the conditions will be alleviated and the objectives achieved.

- The new legislation is more specific on what aspects of development require a development permit and these vary amongst the five categories of development permit area designations.

- Development permits can vary or supplement provisions of any bylaw adopted under Divisions (4) or (7) which includes: zoning; parking; works and services; drainage; sign; screening; and subdivision servicing bylaws. Additional aspects of development which can be addressed vary by category of designation.

- Notice of issuance, amendment or cancellation of a development permit must be filed in the Land Title Office and noted on the title of the subject property.

- A list of development permits issued must be maintained and made available to the public.

- Security may only be required with respect to landscaping (where this can be required in the permit) and to ensure contravention of the permit would not result in an unsafe condition.

The overall thrust of the amendments is to reduce uncertainty by requiring local government to outline, at the time of designation of each development permit area, what the purpose of the designation is and what will be regulated or required.

1.6 Other New Provisions

The Municipal Amendment Act, 1985 includes a number of additional provisions which will have an impact on the use of development permits. In some cases the objectives of development permit area designation may be achieved by use of the alternative tools available. This can be illustrated by the following examples.

Objective	Alternative Tools
. provide flexibility in the siting, size and dimensions of buildings and structures	. development variance permit (S.974)
. require standards for off-street parking	. parking bylaw (S.964)
. regulate size, type, form and appearance of signs	. sign bylaw (S.967)
. require and regulate screening of industrial or commercial uses from residential areas or highways	. screening bylaw (S.968)
. require provision of drainage facilities	. works and services bylaw (S.965) . drainage bylaw (S.966)
. require provision of sidewalks or street lighting	. works and services bylaw (S.965)
. regulate development in flood plain	. flood plain designation (S.969)
. provide flexibility in parking, sign, drainage and other requirements	. development variance permit (S.974)
. protection from erosion, land slip and other natural hazards	. tree cutting bylaw (S.978)

1. INTRODUCTION

The relationship between the newly introduced development variance permit and the development permit is particularly noteworthy. Development variance permits are intended to replace voluntary development permits authorized under Section 717(5) of the previous legislation. They may be issued, upon application, for any land within the local government's jurisdiction and may vary provisions of: rural land use; zoning; parking; works and services; drainage; signs; screening; and subdivision servicing bylaws.

Within a development permit area, a development permit would commonly be used to vary bylaw provisions which would otherwise be addressed by a development variance permit. However, this would only apply where the community plan guidelines for the applicable development permit area include such matters. For example, if the community plan guidelines for a commercial revitalization development permit area do not address drainage or works and services, these bylaw provisions may not be varied by development permit in that area. A development variance permit could thus be used, subject to application by the owner, as it is voluntary.

2. OFFICIAL COMMUNITY PLAN DESIGNATION

2.1 Enabling Authority

Authority to designate development permit areas is granted under Section 945(4) of the Municipal Amendment Act,1985:

"A community plan may, for the purposes of section 976, designate areas for the

(a) protection of the natural environment,
(b) protection of development from hazardous conditions,
(c) protection of Provincial or municipal heritage sites, under the **Heritage Conservation Act**,
(d) revitalization of an area in which a commercial use is permitted, if the area has been designated for that purpose by the Minister, or
(e) establishment of objectives and the provision of guidelines for the form and character of commercial, industrial or multi-family residential development,

and the plan shall, with respect to those areas,

(f) describe the special conditions or objectives that justify the designation, and
(g) specify guidelines respecting the manner by which the
(i) conditions will be alleviated,
(ii) revitalization will occur, and
(iii) objectives of the guidelines referred to in paragraph (e) will be achieved."

The primary changes from the previous legislation are the requirement that development permit areas be designated in an official community plan, rather than in a zoning bylaw, and the requirement for justification and guidelines. If a local government opts to use development permits it must amend its official community plan to designate the areas. Where an official community plan included development permit area designations prior to December 2, 1985, these must be re-designated, by plan amendment, under Section 945(4) of the new legislation (unless the previous designations and accompanying statements comply fully with the new legislation). In cases where no community plan exists or where the community plan has not been adopted as an "official" plan, use of development permits will require adoption of an official community plan.

Section 6 of this guide explains the status of development permit areas designated under the previous legislation, as well as the status of permits issued under that legislation.

2. OFFICIAL COMMUNITY PLAN DESIGNATION

2.2 Categories of Development Permit Area Designations

The legislation provides for five categories of development permit area. There are a number of possible applications under each category, including the following.

Category		Examples of Use
(a)	"protection of the natural environment"	. watercourse preservation . watershed protection . protection of sensitive wildlife habitat areas . protection of areas of rare and fragile vegetation . protection of unique geological features
(b)	"protection of development from hazardous conditions"	. restriction of development in areas subject to flooding, mud flows, debris flows, debris torrents, erosion, land slip, rockfalls, subsidence or avalanche
(c)	"protection of Provincial or municipal heritage sites, under the Heritage Conservation Act"	. protection of designated heritage sites, in so far as design and siting control of nearby buildings would be necessary to protect the designated sites
(d)	"revitalization of an area in which a commercial use is permitted, if the area has been designated for that purpose by the Minister"	. areas designated under the Downtown Revitalization Program . other commercial areas, provided they are designated by the Minister (eg. an unincorporated community's commercial area where, although not eligible for the above program, the community wishes to revitalize the area while maintaining and perpetuating its historic character)
(e)	"establishment of objectives and the provisions of guidelines for the form and character of commercial, industrial or multi-family residential development"	. downtown . commercial nodes or strips . gateways to the community . major view corridors . industrial parks . research parks . large-scale multi-family developments . other commercial, industrial or multi-family areas where form and character are important to the community

The community plan should specify which category, (a) through (e), applies to each area designated. In some cases more than one category may apply, such as a watershed area under category (a) also being subject to slippage and thus qualifying for designation under category (b), or a designated heritage site also being in a designated revitalization area. In such instances the plan should be clear that more than one category applies to all, or a specified portion, of an area.

Whereas community plan maps may be quite general for purposes of designating categories of land use, the plan should be specific in outlining development permit area boundaries. Legal descriptions of designated properties or separate maps with legal boundaries may be required to clearly define the boundaries of each development permit area.

2.3 Justification and Guidelines

Section 945(4)(f) requires the community plan to describe the special conditions or objectives that justify the development permit area designations. Section 945(4)(g) further requires that the plan include guidelines as to how the stated conditions will be alleviated, how revitalization will occur, and how the objectives of controlling form and character will be achieved.

The intention, more simply put, is that the plan describe the special conditions or problems that justify the designations and outline the general approach intended to manage these.

Section 976(2) states that the development permit may regulate or require matters "only in accordance with the applicable guidelines specified" in the plan. The intention here, consistent with the overall thrust of the legislation, is that the plan guidelines specify which aspects of development will be addressed in the permit. For example, if in a category "c" (heritage) development permit area the plan guidelines only address the form and character of buildings and structures, the permit should not vary or supplement the drainage or works and services bylaw provisions. If it is contemplated that the drainage or works and service bylaws may be required to be varied or supplemented, the guidelines should make reference to this possibility.

The principle is that a developer should know, in advance of any application or negotiation process, why an area has been designated and what will be regulated or required. Ideally, the justification and guidelines should be sufficiently detailed such that a developer should be able, after reading the plan and any technical resource material either included or referred to in the plan, to prepare an application substantially in accordance with what would be approvable. In practice, however, the level of detail in the plan will depend on the nature and complexity of the particular situation.

2. OFFICIAL COMMUNITY PLAN DESIGNATION

The plan is intended to outline the approach to be taken. It is intended to provide a framework within which the development permits will be drafted. In most cases, the plan will be more general than the development permit which will detail the specific regulations and requirements.

Inclusion of precise standards and criteria in the plan may not only be impractical in most instances, but would likely necessitate plan amendments where unforeseen circumstances arise or where insufficient flexibility is provided. Local government may adopt (by resolution) more detailed guidelines, separate from the plan, to assist it in the review of applications and preparation of development permits.

The following are hypothetical community plan justification and guideline statements for development permit area designations:

EXAMPLE #1 *"Fern Creek" Development Permit Area*

Category: *"a" (Natural Environment)*

Area: *Development Permit Area No. ____, as shown on Schedule ____*

Justification: *Fern Creek is the water supply for the Fern Creek Water Improvement District. The creek is subject to pollution from domestic septic systems. The objective of development permit area designation is to prevent degradation of the water supply.*

Guidelines: *Development permits issued in this area shall be in accordance with the following:*

1. *No septic tank, drainage or deposit field should be constructed in the portion of the site draining into Fern Creek, up-stream from the Improvement District water intake.*

2. *Alteration of the natural drainage of the site should be minimized.*

3. *Clustering of development on the lower portion of the site should be permitted, without altering the permitted density.*

Comments

The foregoing is a fairly straightforward example of development permit area designation for protection of the natural environment. In more complex cases, such as where technical studies have been prepared to identify special conditions, excerpts from technical reports could be included to more clearly define the conditions and outline the protective measures required.

2. OFFICIAL COMMUNITY PLAN DESIGNATION

EXAMPLE #2 *"Cormorant Bluffs" Development Permit Area*

Category: *"b" (Natural Hazard)*

Area: *Development Permit Area No. ____, as shown on Schedule ____*

Justification: *Ministry of Environment, Resource Analysis Branch, 1980 reconnaissance of the region identified bank instability in this area. Sloughing was confirmed by detailed site inspection. The majority of the area identified was classified as active or inactive, with relatively little classified as stable. Logging has occurred intermittently on the upland property and development potential also exists. The objective of development permit area designation is to regulate development in the area in such a manner as to protect it from the identified hazardous condition.*

Guidelines: *Development permits issued in this area shall be in accordance with the following:*

1. *No permanent structures should be permitted in the area subject to sloughing or damage from sloughing.*

2. *No septic disposal system involving ground discharge or irrigation system should be permitted in the hazard area.*

3. *Notwithstanding the uses permitted in the zoning bylaw, no land use involving significant groundwater discharge should be permitted.*

4. *Notwithstanding the drainage bylaw provisions or requirements, drainage facilities should be required to divert drainage away from the area subject to sloughing.*

5. *A vegetation buffer along the top of the bank, as requested by the Ministry of Environment, should be required.*

6. *All new lots created should provide for suitable building sites in areas not subject to sloughing. Clustering of lots away from the hazard area would be advisable.*

2. OFFICIAL COMMUNITY PLAN DESIGNATION

Comments

This example is also relatively straightforward. Where available, more detailed description of the conditions and excerpts from technical reports would be appropriate to more clearly define the problem.

Point 3 in the guidelines over-rides the zoning bylaw to further restrict the uses permitted. Varying use or density in a development permit is authorized under Section 976(3) where land is in a category "b" (natural hazard) development permit area, but only where it relates to "health, safety or protection of property from damage".

It should be noted that the above guidelines provide the framework only and are not so detailed as to state specific requirements (eg. 200 foot setbacks, 30 foot wide vegetation buffer, etc.). Inclusion of specific standards may not only be impractical, but would likely necessitate plan amendments and result in delays in the approval process.

One general caution regarding designation of hazard areas is worth mention. There is no legal duty to identify and designate hazardous areas in an official community plan. However,any local government which undertakes to designate hazadous areas is advised to exercise care to include all areas that, based on the information at their disposal, are in fact hazardous. The express designation of one area, excluding another area which to the knowledge of local government is also hazardous, could conceivably give rise to an allegation of negligence.

2. OFFICIAL COMMUNITY PLAN DESIGNATION

EXAMPLE #3 *"Old Town" Development Permit Area*

Category: *"c" (Heritage)*

Area: *Development Permit Area No. ____, as shown on Schedule ____*

Justification: *This area contains a number of significant heritage buildings. There are eight municipal heritage sites designated pursuant to the* **Heritage Conservation Act, 1977**, *and two buildings being considered for designation. While the* **Heritage Conservation Act** *adequately preserves the actual designated buildings, it cannot ensure that the overall character of this special area is maintained and enhanced as an appropriate setting for the heritage buildings. Redevelopment of surrounding buildings must occur in a manner which does not detract from this community asset. Coordinated landscaping of the area would also enhance the overall appearance. All properties in the designated area benefit from the assured continuity and stability of this heritage asset.*

Guidelines: *Development permits issued in this area shall be in accordance with the following:*

1. *Designated heritage sites should be preserved.*

2. *Rehabilitation or renovation of existing non-designated heritage buildings is generally preferred, where economically viable.*

3. *The form and character of new development should complement designated heritage sites.*

4. *The exterior design and finish of new development and non-designated heritage buildings should be compatible with, and complementary to, designated heritage buildings. However, new buildings which attempt to imitate or duplicate heritage styles or components are generally undesirable.*

5. *Off-street parking and service areas should be screened.*

6. *Parking and other works and services requirements may be reduced where strict compliance with the bylaws would undermine the heritage character of the site.*

7. *Landscaping should be used to provide continuity (soften the visual effect) in areas of dissimilar architectural styles.*

8. *Views of designated heritage sites should be preserved, where possible.*

9. *Street furniture, lighting, signage and other structures, both on private and public property, should be designed to provide continuity and reinforce the character of the area.*

Comments

The foregoing example is one of a number of approaches which can be taken with respect to heritage preservation. The example designates in effect a heritage area, rather than solely those sites designated under the Heritage Conservation Act. The rationale for such a designation is that heritage buildings should not be treated in isolation from their surroundings, and that regulation of the form and character of the surrounding area is necessary to protect heritage sites.

Form and character can also be regulated in category "d" (revitalization) and category "e" (commercial, industrial and multi-family) areas, although in the latter case the "particulars of exterior design and finish" cannot be specified. Where a designated heritage site(s) and surrounding area are also in a designated "revitalization" area, a category "d" development permit area designation over the whole area would provide equivalent protection, provided the guidelines outline the special protective measures required to preserve the heritage site(s). A category "e" development permit area designation would suffice where regulation of the general form and character of the surrounding area is considered sufficient to preserve the heritage site. (The designated heritage site is itself adequately protected under the Heritage Conservation Act.)

Heritage site or area preservation should also be implemented through means other than development permit area designation. The densities permitted in the zoning bylaw should be reviewed to ensure that they reflect existing densities. Provision for significantly higher densities may create economic pressure to demolish older building stock and redevelop at a scale out of character with the area. Conversely, alteration of the uses permitted may make restoration and rehabilitation more viable than under existing regulations.

2. OFFICIAL COMMUNITY PLAN DESIGNATION

EXAMPLE #4 *"Old Town Centre" Development Permit Area*

Category: *"d" (Revitalization)*

Area: *Development Permit Area No. ____, as shown on Schedule ____*

Justification: *This area is the original townsite and commercial core. It was largely developed between 1890 and 1930 and contains the architectural heritage of the community. Although a variety of architectural styles are present, most buildings reflect Victorian character. In recent years commercial development has shifted away from the river front, along Princess Street, or relocated to shopping malls. The result has been a number of vacant or derelict building in the Old Town Centre. Revitalization of this area is a key to renewal of the downtown and the local economy. The area's architectural heritage is to be used to re-establish a vibrant and attractive Old Town Centre. The Minister of Municipal Affairs has approved designation of this area as a "revitalization" area under Section 945(4)(d) of the* Municipal Amendment Act, 1985.

The objective of the designation is revitalize the Old Town Centre commercial area through re-establishment of its attractive and distinctive architectural style.

Guidelines: *The following guidelines illustrate the general approach to be taken to achieve revitalization of this area. For more specific information, refer to the "Old Town Centre Design Guidelines", adopted by Council, and available from City Hall.*

Development permits issued in this area shall be in accordance with the following:

1. *The distinctive character of the original (1890-1930) commercial buildings should be preserved and restored.*

2. *The siting, shape and massing of new buildings should correspond with existing commercial buildings. These are generally 30 feet wide with gable or rear-sloping roof lines.*

2. OFFICIAL COMMUNITY PLAN DESIGNATION

3. *New buildings should be 2 or 3 storeys in height. Additional storeys, if inset, may be appropriate in some locations but must not dominate the skyline or obstruct view planes of the waterfront or major landmarks.*

4. *Windows, doors, signs and other architectural features should complement the character of adjacent buildings. Wood, brick and stone exterior finish materials should be used, and large expanses of glass, aluminium or steel avoided.*

5. *Off-street parking should be in the rear, unless suitably screened.*

6. *Landscaping should be used to provide shade and wind breaks as well as to enhance the appearance of the area.*

Comments

This example uses the existing distinctive character of the area as a cornerstone in revitalization. Alternatively, revitalization could be based on establishing a new "theme" or a general upgrading without attempting to prescribe architectural styles.

The example outlines the general approach and refers to more detailed design guidelines for specific information. Design guidelines could be included as part of the community plan, though this may be impractical due to the added bulk, the level of detail provided, and the process for amendment (by bylaw and public hearing). Adoption of more detailed design guidelines by resolution would be more practical in most circumstances.

This category of development permit area may only be used where the area has been designated for "revitalization" by the Minister. It would apply to, but not be limited to, areas under the "Downtown Revitalization Program."

Local governments are encouraged to request designation of commercial revitalization areas before submitting the community plan designation to public hearing. Early consultation with Ministry staff may be useful.

EXAMPLE #5 *"Eastwood Centre" Development Permit Area*

Category: *"e" (Commercial, Industrial and Multi-Family)*

Area: *Development Permit Area No. ____, as shown on Schedule ____*

Justification: *This suburban shopping mall/office complex was constructed in 1960 with minor expansion taking place in 1970. The large, freestanding structure with large setbacks and extensive, continuous parking area is out of character with adjacent, modern commercial and office developments. The site is expected to undergo a major renovation and expansion. The objective of the designation is to ensure that the redevelopment is compatible with the form and character of adjacent development.*

Guidelines: *Development permits issued in this area shall be in accordance with the following guidelines:*

1. *New buildings should be constructed with little or no setback from Eastwood Avenue, so as to draw the shopping mall complex into the newer commercial area and bring it into balance with adjacent development.*

2. *While the new buildings may be relatively large they should be "massed" to give the impression of smaller blocks, in keeping with the scale, proportion and rhythm of adjacent buildings. A two storey height limit should be observed along Eastwood Avenue, however, additional storeys, if inset, may be appropriate.*

3. *While a number of building materials are used in the adjacent developments, glass; reflective panels; aluminium; ceramic tile; and smooth, coloured concrete are desirable. Mixing a variety of materials over a relatively small area would generally be out of character.*

4. *Parking should be in smaller groupings with visual breaks. Little or no parking should front onto Eastwood Avenue.*

5. *Notwithstanding the landscape screening bylaw, landscape screening requirements should be supplemented to separate parking clusters and to mask storage and service areas from adjacent residential uses.*

6. *Lighting should be softer and lower than the existing mercury vapour lighting towers.*

7. *Signage should be low and grouped, so as to be unobtrusive.*

Comments

In this example a particular site is designated. If there were a number of properties in the vicinity which were also expected to be redeveloped the designation would be extended over a larger area. In fact, the requirement for development permit areas being designated in the community plan is intended to discourage "spot" designations. Forward planning of areas where form and character controls are required is encouraged.

This category of designation ("e") may also be used for industrial and multi-family areas or sites.

Also worth noting in this example is the guidance, under point 3, as to the exterior finish. The legislation does not provide for specifying the particulars of exterior design and finish, therefore the plan guidelines may only address these in a general way. It is recognized that exterior design and finish are intrinsic components of "character" and the intent of the legislation is that exterior design and finish (in category "e") may be dealt with but not to the point of specifying particular architectural features and particular materials and colours.

2. OFFICIAL COMMUNITY PLAN DESIGNATION

EXAMPLE #6 *"Arbutus/Sussex" Development Permit Area*

Category: *"e" (Commercial, Industrial and Multi-Family)*

Area: *Development Permit Area No. ____, as shown on Schedule ____*

Justification: *This five hectare parcel, located at the intersection of Arbutus and Sussex Streets, is designated for medium density residential use, with a maximum density of 40 units per hectare. It is surrounded by mixed commercial/multi-family developments at the opposite intersection corners and by single family development to the south and west. The objective of the development permit area designation is to ensure that development of the site is in character with adjacent developments.*

Guidelines: *Development permits issued in this area shall be in accordance with the following guidelines:*

1. *The size (scale) and shape (massing) of buildings should relate to adjacent development and provide a transition between the less intensive uses to the south and west and the more intensive uses to the north and east.*

2. *The shape, siting, roof line and exterior finish of buildings should be sufficiently varied to avoid a monotonous appearance.*

3. *Long vistas of the development, and within the development, should be avoided to maintain a human scale. Use of curvilinear internal access ways and retention of mature trees can be used to avoid long vistas.*

4. *Lighting and signs should be unobtrusive and in scale with their surroundings.*

5. *Parking should be in smaller clusters, screened from view from internal and adjacent residential uses and from adjacent streets.*

2. OFFICIAL COMMUNITY PLAN DESIGNATION

Comments

This example of a category "e" designation deals with a multi-family development where the general form and character are important due to its location, but where it is desired to allow the developer substantial flexibility in development of the site.

3. CIRCUMSTANCES REQUIRING DEVELOPMENT PERMITS

Section 976(1) specifies the conditions under which a development permit must be obtained. The activities requiring a development permit vary by category of development permit area designation. They are outlined in the following matrix:

Activities requiring a Development Permit	Category of Designation				
	Natural Environment a	Hazard Area b	Heritage c	Revitalization d	Commercial Industrial Multi-Family e
. subdivision of land	Yes	Yes	Yes	Yes	Yes
. construction of or addition to building or structure, where a building permit is required	Yes	Yes	Yes	Yes	Yes
. any alteration of land, building or structure	No	No	Yes*	Yes	No

Note: see Section 976(1) for specific wording

*required only for the site designated under the Heritage Conservation Act, not for the surrounding area

4. REGULATORY SCOPE

Section 976, subsections (2) through (7) inclusive, specifies the matters which can be addressed by development permit. Development permits can vary or supplement provisions of any bylaw adopted under Division (4) and (7), which includes: zoning; parking; works and services; drainage; sign; screening; and subdivision servicing bylaws. Additional aspects of development which can be addressed vary by category of designation and are outlined in the following matrix.

Aspects which can be addressed in a development permit* (in addition to bylaws under Divisions [4] or [7])	Category of Designation				
	Natural Environment	Hazard Area	Heritage	Revitalization	Commercial Industrial Multi-Family
	a	b	c	d	e
. use and density (if relate to health, safety or protection of property)	No	Yes	No	No	No
. Vary Provincial flood regulations under S.969	No	No	No	No	No
. sequence and timing of construction	Yes	Yes	Yes	Yes	Yes
. prohibition of septic systems, irrigation or water systems	Yes	Yes	No	No	No
. preservation/dedication of natural water courses	Yes	Yes	No	No	No
. works to preserve or enhance natural water courses	Yes	Yes	No	No	No
. regulation of development above water courses	Yes	Yes	No	No	No
. Ministry of Environment request for vegetation or trees (erosion or fisheries protection)	Yes	Yes	No	No	No
. landscaping standards	No	No	Yes	Yes	No
. form and character of development	No	No	Yes	Yes	Yes
. particulars of exterior design and finish	No	No	Yes	Yes	No

Note: see Section 976(2) through (7) for specific wording

* But only in accordance with the applicable guidelines in the community plan.

4. REGULATORY SCOPE

The content of any particular development permit must be in accordance with the applicable guidelines specified in the plan for that area. Therefore, a permit should not vary or supplement bylaw provisions unless the applicable guidelines so indicate, at least in a general manner. This also applies to the aspects of development listed in the preceding matrix. Each requirement included in a development permit should be traceable to at least a general reference in the applicable plan guidelines.

The legislation differentiates between designation categories with respect to the degree to which design can be regulated by development permit. Section 976(7) permits requirements respecting "character" of development for designation categories "c" (heritage) and "d" (revitalization) and specifies that this includes the "siting and form" of buildings and structures. While category "e" (commercial, industrial and multi-family) may also address "character", it is restricted such that "the requirements shall not relate to the particulars of exterior design and finish". To clarify this distinction, the following definitions should be considered as guides:

> **"form"** means the overall visual arrangement of the parts of a building or structure and includes its shape, siting and volume. Form is a recognizable, widely used architectural term and should not result in interpretation difficulties. Specification of the building envelope would be a key element in regulating form.
>
> **"character"** means distinctive qualities or style. A development that is "in character" is one that is in balance with its surroundings and has a style sympathetic to, or compatible with, the buildings, structures, vegetation and terrain to which it relates. Character could be specified by reference to a general architectural style, such as: modern; post modern; Victorian; West Coast; or shingle. These are very broad styles and could be more narrowly defined to describe a particular character. Description of the desired character, however, need not be based on a particular style but rather may involve identification of the overall distinctive qualities of an area.
>
> **"particulars of exterior design and finish"** means specific architectural features and the specific material, texture or colour of the exterior cladding of a building or structure.

Therefore, for areas designated under category "e", the guidelines and actual development permits must not detail specific architectural features (eg. cornices, canopies, shutters, etc.) or the specific exterior finish (eg. cedar siding, textured concrete, particular colours, etc.).

4. REGULATORY SCOPE

With regard to the flood hazard, local government may wish to use development permits where Provincial regulations (under Section 969) have not been introduced. The legislation allows designation of development permit areas for protection from natural hazards (category "b") within which development permits could, for example, specify that certain areas remain free of development, or specify conditions under which development could take place (S.976[5][d]). Zoning bylaw provisions for use and density may also be varied where necessary for health or safety reasons or for the protection of property (S.976[3]). Where Provincial flood plain regulations are in existence, development permit area designations would be unnecessary, unless local government wishes to make additional requirements such as preservation or dedication of water courses or construction of dikes or other works.

5. ADMINISTRATION

5.1 Development Approval Procedures

Section 954(1) requires local government to adopt a procedures bylaw. Where a local government decides to designate development permit areas, the procedures bylaw must outline the procedure under which a land owner may apply for a development permit. The procedures bylaw need not be a detailed description of each step in the approvals process. Provision is made under Section 954(7) for local government to prepare a procedures manual, also to be available to the public, wherein a more detailed description of the approval process (eg. referral to the building inspector or design panel) could be outlined. Section 954(8) lists the requirements of a procedure manual, should one be prepared.

Local government may also, by bylaw, designate the form of permits issued (Section 980[1]) and prescribe application fees (Section 988[1]); however, the cost of the fee is not permitted to exceed the costs of processing and inspection (Section 988[2]).

Every application for a development permit or a bylaw amendment must be considered by the local government (Section 954[2]). Applications can not be rejected at the staff level, for example, on the grounds that the application conflicts with local government policies or bylaws.

Development permits are issued in the same manner as the previous legislation, by resolution of the local government. This also applies to amendments to development permits.

Local government is also required, under Section 954(4), to maintain a current list of bylaws in effect and permits issued and to ensure that the list is available to the public. This list should include every development permit issued after December 2, 1985.

The requirements for all applications being adjudicated by the elected officials, the procedural bylaw, and the list of bylaws and permits are intended to facilitate public understanding of, and access to, the development permit system.

5.2 Filing Notice/Subsequent Owners

Section 980(8) requires local government to file, in the Land Title Office, notice of a development permit on the title of the land described therein. Notice of amendment or cancellation must also be filed against the subject title. This is intended to alert subsequent (and prospective) owners who will also be bound by the terms of a development permit in effect (Section 980[10]).

Filing notice is only required for development permits issued in areas designated under Section 945(4) in an official community plan. It is not required for issuance, amendment or cancellation of permits under Section 998 (for areas designated under the previous legislation, so

long as they remain in effect and the permits issued therein remain in effect).

5.3 Holding of Security

Local government may require an applicant to provide security, but only to ensure completion of landscaping or to ensure that an unsafe condition does not arise due to a contravention of the permit (Section 980[2]). Where the landscaping has not been satisfactorily completed or where the site is left in an unsafe condition, local government may undertake to complete the landscaping or correct the unsafe condition and deduct the costs from the security, with the excess returned to the holder of the permit (Section 980[3]).

Interest earned on security being held accrues to the holder of the permit and must be returned to him but, in the case of default, may be applied to completion of the landscaping or correction of an unsafe condition.

The intent of the legislation is to limit security to those aspects which are of principal importance to the public -- safety and completion of landscaping -- and consequently to reduce the security component of development costs.

6. TRANSITION

Section 998 outlines the transitional aspects of development permits areas in existence prior to the new legislation, development permits issued in these areas and voluntary development permits issued prior to the new legislation.

The legislation provides for continuation of development permit areas designated prior to December 2, 1985 for 180 days, until July 7, 1986. Local government may continue to issue permits in these areas and the contents of the permits can be based on the items (a) through (k) of Section 717(2) of the previous legislation.

Accordingly, development permits issued in these prior-designated areas remain valid and may be amended based on Section 717(2), (a) through (k), as they could have been prior to the new legislation. There is no time limitation on the amendment of these permits using the (a) to (k) provisions under the "old" Section 717(2). However, where the bylaw designating the applicable development permit area limits the scope of the development permits to a portion of the (a) through (k) list, the limitation would continue to apply.

Voluntary development permits issued before December 2, 1985 also remain valid and may be amended based on Section 717(2) (a) through (k).

APPENDIX A: EXCERPTS FROM THE LEGISLATION

Content of community plans

945. (4) A community plan may, for the purposes of section 976, designate areas for the

(a) protection of the natural environment,

(b) protection of development from hazardous conditions,

(c) protection of Provincial or municipal heritage sites, under the *Heritage Conservation Act*,

(d) revitalization of an area in which a commercial use is permitted, if the area has been designated for that purpose by the minister, or

(e) establishment of objectives and the provision of guidelines for the form and character of commercial, industrial or multi-family residential development,

and the plan shall, with respect to those areas,

(f) describe the special conditions or objectives that justify the designation, and

(g) specify guidelines respecting the manner by which the

(i) conditions will be alleviated,

(ii) revitalization will occur, and

(iii) objectives of the guidelines referred to in paragraph (e) will be achieved.

Development approval procedures

954. (1) Where a local government has adopted an official community plan, a zoning bylaw or a rural land use bylaw, it shall by bylaw define procedures under which an owner of land may apply for amendment to a plan or bylaw, or the issue of a permit under this Part.

Development permits

976. (1) Where an official community plan designates areas under section 945 (4),

(a) land within the area shall not be subdivided,

(b) construction of or addition to a building or structure, for which a building permit would be required, shall not be commenced,

(c) land, or a building or structure on a Provincial or municipal heritage site, shall not be altered, and

(d) land, or a building or structure located on land that is within an area designated under section 945 (4) (d), shall not be altered

unless the owner first obtains a development permit under this section.

(2) Subject to subsections (3) and (4), a local government may, by resolution, issue a development permit which may

(a) vary or supplement a bylaw made under Division (4) or (7),

(b) include requirements and conditions or set standards under subsections (5) to (7), and

(c) impose conditions respecting the sequence and timing of construction

but only in accordance with the applicable guidelines specified in an official community plan under section 945 (4) (g).

(3) A development permit shall not vary the use or density of the land from that permitted in the bylaw except, where the land was desig-

nated under section 945 (4) (b), the conditions and requirements referred to in subsection (5) may vary that use or density but only as they relate to health, safety or protection of property from damage.

(4) A development permit shall not vary a flood plain specification under section 969 (2).

(5) Where land has been designated under section 945 (4) (a) or (b), a development permit may

(a) impose conditions respecting the sequence and timing of any construction on land described in the permit,

(b) require, in an area that the permit designates as containing unstable soil or water which is subject to degradation, that no septic tank, drainage and deposit fields, or irrigation or water systems be constructed,

(c) require that

(i) natural water courses be preserved or dedicated, and

(ii) works be constructed to preserve or enhance natural water courses,

(d) specify areas of land that are located above the natural boundary of streams, rivers, lakes or the ocean that shall remain free of development, except in accordance with any conditions contained in the permit, and

(e) require, where the Minister of Environment has requested it, that vegetation or trees be planted or retained in order to

(i) control erosion or protect banks, or

(ii) protect fisheries.

(6) Where land has been designated under section 945 (4) (c) or (d), a development permit may establish standards for

(a) the exterior design and finish of buildings and structures, and

(b) landscaping.

(7) Where land has been designated under section 945 (4) (c), (d) or (e), a development permit may include requirements respecting the character of development including the siting and form of buildings and structures, but, where the designation is under section 945 (4) (e), the requirements shall not relate to the particulars of exterior design or finish of the buildings or structures.

(8) Before issuing a development permit under this section, a local government may require the applicant to furnish, at his expense, a report, certified by a professional, geotechnical or civil engineer, to assist the local government in determining what conditions or requirements under subsection (3) it will impose in the permit.

Permit procedures

980. (1) A local government may, by bylaw, designate the form of permits issued under this Division.

(2) A local government may, for the purposes only of subsection (3) and as a condition of the issue of a permit under this Division, require that the applicant for the permit provide security by, at the applicant's option, an irrevocable letter of credit or the deposit of securities in a form satisfactory to the local government, in an amount stated in the permit.

(3) Where a local government considers that

(a) a condition in a permit respecting landscaping has not been satisfied, or

(b) where, as a result of contravention of a condition in a permit, an unsafe condition has resulted,

the local government may undertake and complete the works required to satisfy the landscaping condition or carry out any construction required to correct the unsafe condition, at the cost of the holder of the permit, and may apply the security in payment of the cost of the works, with any excess to be returned to the holder of the permit.

(4) Interest earned on the security provided under subsection (2) shall accrue to the holder of the permit and be paid to him immediately on return of the security or, on default, become part of the amount of the security.

(5) A local government may issue more than one permit for an area of land, and the land shall be developed strictly in accordance with the permit or permits issued, which shall also be binding on the local government.

(6) Subject to the terms of the permit, where the holder of a permit under this Division does not substantially commence any construction with respect to which the permit was issued within 2 years after the date it is issued, the permit lapses.

(7) Where a permit lapses, the local government shall, subject to subsection (3) and section 975 (10), return any security provided under subsection (2) to the person who provided it.

(8) Where a local government issues a permit under sections 974 to 976, it shall file in the land title office a notice that the land described in the notice is subject to the permit, and, on filing, the registrar shall make a note of the filing against the title to the land affected.

(9) Where a permit is amended or cancelled, the local government shall file a notice of the amendment or cancellation in the manner prescribed by the Lieutenant Governor in Council.

(10) Where a notice is filed under subsection (8) or (9), the terms of the permit or any amendment to it are binding on all persons who acquire an interest in the land affected by the permit.

(11) The Lieutenant Governor in Council may prescribe fees for the filing of notices under this section, and section 315 of the *Land Title Act* applies in respect of those fees.

(12) This section does not apply to a permit issued under section 977.

Development permits

998. (1) For a period of 180 days after section 976 comes into force, a local government or the Islands Trust may issue development permits covering any land that was in a development permit area that was designated under section 717 before section 976 came into force.

(2) Designations of development permit areas under section 717 are cancelled 180 days after section 976 came into force, but any development permit issued before that time, or during the 180 day period, remains valid.

(3) A local government may amend a development permit that remains valid by virtue of subsection (2) as they could have amended it before the *Municipal Amendment Act, 1985* came into force.